



Appeal Decision

Hearing held on 20-21 January 2016

Site visit made on 21 January 2016

by John Chase MCD DipArch RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09/02/2016

Appeal Ref: APP/R0335/W/15/3131136

Old Farmhouse Row, Abbey Place, Warfield, Bracknell, RG42 6BF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Millgate against the decision of Bracknell Forest Borough Council.
 - The application Ref 14/00980/FUL, dated 4 September 2014, was refused by notice dated 2 February 2015.
 - The development proposed is the erection of 10 No. dwellings plus parking and landscaping; shared surface access drive from Abbey Place retained and extended.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It was agreed that completed versions of the Unilateral Undertakings submitted by the appellants, and the wording of additional draft conditions, would be accepted after the Hearing. They have been taken into account in determining the appeal.
3. At the Hearing the appellants requested substitution of drawings showing alterations to the site layout and car ports. The Council raised no objection to consideration of the revised scheme, and it is accepted that the alterations to the access road and the car ports are minor and would not have a significant impact on any third parties. However, the revised drawings also make provision for a footpath passing through the site from Abbey Place to the western boundary, public access to which would be secured by the Unilateral Undertakings in the event that a connecting footpath should be provided from the adjoining land in the Warfield development area.
4. It is likely that interested parties would wish to comment on this aspect and, as discussed at the Hearing, the letter sent to them by the appellants fell short of an invitation for representations. Applying the Wheatcroft Principles¹, this is an alteration of sufficient substance to require public consultation and, in its absence, the revised drawings cannot be accepted in this appeal. However, it would have been possible to incorporate the other minor alterations in a condition requiring the submission of amended drawings, if the scheme had been acceptable in other respects.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment, 1981

Main Issues

5. Having regard to the matters raised in this case, including the Council's reasons for refusal, the statement of common ground, and the representations received, the following main issues were suggested to the parties at the start of the Hearing, and formed the basis of the subsequent discussion: the effect of the proposal on i) the Warfield development area in terms of its character and appearance and the provision of infrastructure, and ii) the habitat of protected species in the Thames Basin Heaths Special Protection Area (SPA).

Reasons

Policy Background

6. The appeal relates to a proposal for new housing served by a short cul-de-sac from an existing estate in Abbey Place. The land is in the Warfield development area, which has been designated by Policy CS5 of the Core Strategy, adopted 2008, for comprehensive mixed use development. Policy SA9 of the Site Allocations Local Plan, adopted 2013, envisages a well designed scheme providing 2,200 dwellings, employment, neighbourhood centre, primary schools, community hub, on-site open space, and Suitable Alternative Natural Greenspace to offset the impact on the SPA. Masterplans will be prepared by developers for agreement with the Council, to become important material considerations in assessing subsequent planning applications.
7. Development Plan policies are supported by a Warfield Supplementary Planning Document (SPD), 2012, which, amongst other matters, expects proposals to support the comprehensive development of Warfield, including accessibility, and delivery of infrastructure. Regard should be had to the character of surrounding settlements, and to existing landscape, which should influence the layout of the new development. Reference is made to a varied and informal layout, with the inclusion of internal mews and courtyards. The Warfield Central Area Masterplan, agreed by the Council in 2015, duplicates these objectives and sets out, in diagrammatic form, a layout which includes a residential road running alongside the western boundary of the land, with an indication of access from this road into the site.
8. Other policies referred to in the Council's reasons for refusal include those related to the need to mitigate the impact on the SPA (EN3 of the Local Plan (LP), adopted 2002 and NRM6, saved from the South East Plan, 2009), and securing good design (CS7, LP Policy EN20), infrastructure (CS6, CS8, CS24, LP Policy R4), and affordable housing (CS16, LP Policy H8).
9. The Council accept that they are not able to demonstrate a five year supply of developable residential land to conform with para. 47 of the National Planning Policy Framework (NPPF). In this respect, policies for the supply of housing should be considered out of date, in accordance with para. 49, and the appellants make specific reference to Core Strategy Policies CS2, CS9 and CS15, which deal, respectively, with the sequence of allocating development land, the use of land outside settlements, and the means of delivering 11,139 dwellings before 2026.
10. However, there is no indication that the proposal would be contrary to these policies, and the appellants do not allege that those referred to by the Council, CS5 and SA9, are out of date through the absence of a five year supply. This

is a supportable position because, whilst related to the supply of housing, and intended to meet the housing need identified in CS15, they have the much wider role of achieving the comprehensive development of a major urban extension. The current shortage of residential land is an important material consideration which should be taken into account in assessing the proposal, but there is not reason to consider that Policies CS5 and SA9 should be deemed out of date in applying the decision-taking process set out in NPPF para 14.

Character and Appearance

11. The layout includes a terrace of houses at the back of the site facing onto Abbey Place, from which it would be separated by a semi detached pair at right angles, and a parking area and blocks of carports. The Council's committee report refers to the scheme turning its back on the Warfield development area, and this is a valid criticism. Whatever the final form of development of the adjoining land, the appeal scheme would create a visual and physical barrier to prevent its incorporation into the wider area. It would become an intrusion into the development area, rather than part of the overall scheme within it.
12. Despite indications in the Masterplan that the site is contained by existing vegetation, in practice the hedge on the southern boundary has now largely been removed, the northern boundary is open, and, whilst there is a line of small trees on the western side, these appear to be the remnants of a neglected hedge and of limited landscape value. It is certainly true that elements of this planting may inform and contribute to the landscape setting of the development area, but it is not of such quality for its complete retention to be a significant benefit.
13. The Council's evidence does not indicate a fundamental highways objection to taking access via Abbey Place, nor require that the new housing should be separated from the existing estate. Indeed, the Warfield SPD identifies the need to integrate with the character of the adjoining villages and, at the Hearing, the Council noted that there were precedents for access through existing development. It is also the case that the appellants' scheme is influenced by the existence of a ransom strip around the perimeter of the site and, whilst such matters are largely of a private legal and commercial nature, it is appreciated that they might affect the ability to carry out a comprehensive development. However, none of these factors justify a layout which would create a permanent barrier to the surrounding land.
14. The need for an integrated approach to the development area also relates to accessibility across it, and the Council draw attention to the longer cycling and walking distances to facilities to the west of the site if the scheme were to rely only on access via Abbey Place. There might be potential, as envisaged by the amended drawings, for the scheme to provide a future footpath to overcome this concern, but, even if satisfactory in other respects, such a proposal would not overcome the physical and visual isolation of the housing from the neighbouring development land.
15. The need for a comprehensive approach to the development of Warfield is central to Policies CS5 and SA9, and the separation of the site from its surroundings prevents the scheme from achieving this requirement. It does not amount to the quality of design sought by these policies, and by CS7 and EN20, and would be detrimental to the overall character and appearance of the Warfield development area.

Infrastructure

16. Alongside coordination of the layout of the new development area is the need for a managed approach to the provision of the infrastructure to serve it, including roads and transport services, neighbourhood and community centres, schools, open space and management of the SPA. In part, this will be funded by the Community Infrastructure Levy (CIL), but the main elements will be financed by specific planning obligations. To this end, the appellants' Unilateral Undertaking (version 'B') commits to contributions for a range of infrastructure, proportionate to the overall cost of their provision, and there is no reason to conclude that they would not satisfy the tests in CIL Regulation 122.
17. However, the Council raise a concern that there are multiple owners of the land within the Warfield development area. If they were to accept individual contributions from a number of sites then there is a strong likelihood that the limit of five for any one infrastructure project, imposed by CIL Regulation 123, would be exceeded, leading to a future shortfall in the funding of the overall scheme. Whilst there are fewer than five contributions at present, and the obligations are entitled to be taken into account, the Council's concern is also a material consideration in determining the appeal.
18. It is the Council's preference that developers should coordinate their activities to limit the number of separate proposals, and therefore the number of contributions. This does not seem a unrealistic objective; for instance, a consortium has been formed to develop the majority of the land around the appeal site, and it is likely to be in the mutual interests of the parties involved to cooperate in the allocation of the necessary infrastructure land and costs. Indeed, this would be an essential aspect of a successful scheme, because the Council indicate that they are not in a position to implement the infrastructure projects themselves, even if in receipt of the necessary funds.
19. To mitigate the concern about the limitations imposed by CIL 123, the appellants have submitted an alternative Undertaking (marked 'A'), which creates a commitment not to start the housing construction until contributions have been made in association with the development of other land in the appellants' ownership, thereby diminishing the number of obligations. However, even with this provision, the total landholding would remain a relatively small proportion of the overall development area. Both this, and the alternative suggestion of a Grampian condition, would negate the principal argument in favour of this development: that the land is available now and could come forward early in order to address the current housing shortage. Rather, progress would be dependent on other proposals in the wider area.
20. Therefore, whilst the tendered obligations are intended to meet the requirements of Policies CS6, CS8 and CS24 by offsetting the impact of the development, there is a realistic probability that the outcome would endanger the comprehensive approach contained in Policies CS5 and SA9 and/or create significant uncertainty about the deliverability of the development.

Special Protection Area

21. The site lies within 4.8km of the Thames Basin Heaths SPA, in the zone of influence identified in Policy NRM6 where mitigation measures are necessary to offset the significant effect which development would have on the integrity of the SPA, and the habitat of the protected species within it. This mitigation is

intended to take the form of Suitable Alternative Natural Greenspace (SANG). Whilst the Council indicate that a number of SANG are established, financed by CIL contributions, they are insufficient to meet the total needs of the Borough, and there is an expectation that larger developments will make specific provision, accessible to the housing provided. The preferred location in this case is an area of land at Cabbage Hill, on the western side of the development area, but the Warfield SPD also makes provision for alternative proposals. The appellants refer to the likelihood that a SANG will be available in the vicinity of Wellers Lane, and that heads of terms have been agreed between the interested parties to ensure that part of this land would be allocated to offset the effect of the appeal proposal. A Grampian style condition is suggested, to prevent development until such time as the SANG has been established.

22. Whilst a submission from Natural England discourages the use of such a condition, it is certainly true that similar examples have been accepted in previous appeals, apparently without challenge, and there is an argument that no harm to the SPA can arise as long as the development is prevented from proceeding. However, fulfilment of the condition relies on the actions of others, beyond the present control of the developer, and there is no certainty that the identified land would meet the requirements of a SANG. Even though it may be possible to avoid harm to the habitat of protected species in the SPA, in conformity with Policies NRM6, CS5, SA9 and ENS, there would remain significant doubt about when delivery of housing from the site might occur.

Other Matters

23. Core Strategy Policy CS16 seeks a range of housing types, including affordable, which are required in identified major housing sites by Local Plan Policy H8. Whilst Appendix 2 of the Warfield SDP, Infrastructure Delivery Plan, implies a lower threshold of 15 units, it is the Council's case that the site is not distinguished from the wider development area, and that the scheme should include a proportion of affordable housing. To this end, a Unilateral Undertaking includes provision for three affordable dwellings.
24. Local residents have raised a number of concerns about the increase in traffic and the likelihood of parking in the existing estate at Abbey Place, which has a relatively narrow and winding access road. It is also alleged that the proposed site layout would result in difficult parking manoeuvres, potentially dangerous for pedestrians. These points are noted. Nonetheless, the design makes reasonable provision for on-site parking and, although turning operations may be complicated, speeds would be low and the residents familiar with the situation. The Council indicate that their reason for refusal concerning manoeuvring space would be overcome by the minor amendments to the site layout. Similarly, traffic generation from the site would be limited, and there is no compelling case that it would exceed the capacity of the road.
25. Other matters raised include the ecological impact of the development, concerns about the density of the layout and absence of on-site open space, and the potential loss of residential amenity for residents with houses backing onto the parking areas. These points are noted, but there would be potential for mitigation by the imposition of conditions dealing with matters such as boundary treatment, landscaping, and ecological enhancement. Overall, the evidence does not indicate that these, or the other matters raised, would be additional reasons to dismiss the appeal.

Conclusions

26. The appellants identify a range of economic, social and environmental benefits of the scheme. However, there is no reason to consider that these could not also be substantially achieved by a layout which has regard for the need to integrate with the development of the adjoining land. The NPPF attaches great importance to the design of the built environment, and the failure to achieve a scheme which has due regard for its surroundings prevents it from being considered a sustainable form of development.
27. With respect to the other aspects of the case, there is a clear need for mechanisms to ensure that the resources and management are in place to deliver the infrastructure and SANG space for the Warfield development in a timely manner, and a fair distribution of costs to secure deliverability of the whole scheme. It is too early to say that the Council's approach of encouraging the formation of a limited number of combined development proposals will not be successful in this respect, and, despite some evidence of slippage, that the area will not be capable of contributing to the five year housing supply. There is a realistic prospect that early approval of proposals for minor parts of the designated area could undermine this process.
28. It is recognised that this may lead to individual projects being delayed whilst awaiting resolution of the wider scheme, but, on balance, the need to ensure the comprehensive development of the area, as expressed in Policies CS5 and SA9, exceeds the benefit of the early delivery of a limited supply of housing to offset the current shortfall. It is certainly the case that the appellants' proposals to introduce an element of conditionality into the scheme are intended to overcome the difficulties identified by the Council, but they also call into question whether the site can be considered deliverable now. There is the likelihood that a grant of permission at this stage would unnecessarily constrain the evolution of the wider scheme.
29. Overall, there are adequate grounds to consider that the proposal would not accord with development plan policy by failing to contribute to a comprehensive approach to the Warfield development area.

John Chase

INSPECTOR

APPEARANCES

FOR THE APPELLANTS

Mr D Bond BA, MRTPI	Woolf Bond Planning LLP
Mr R Barter MRTPI	Millgate Homes
Mr J Furneaux BA	Millgate Homes
Ms C Daniels	Solicitor, Pitmans

FOR THE LOCAL PLANNING AUTHORITY:

Ms H Coplestone BA, BTP, DipEA, MRTPI	Major Sites Implementation Manager
Ms Rachel McKoy LLB	Solicitor
Ms J Gil BA, MSc, AIEEM, ARTPI	Senior Environmental Policy Officer
Mr M Lunn BSc, MSc	Senior Planning Officer

INTERESTED PERSONS:

Mr C Wools	Local Resident
Ms A Sears	Local Resident
Mr P Edney	Local Resident
Cllr Peacey	Ward Councillor

DOCUMENTS SUBMITTED AT HEARING

Submitted by the Appellants:-

- A1 Draft Unilateral Undertaking A
- A2 Draft Unilateral Undertaking B
- A3 Draft Unilateral Undertaking, affordable housing
- A4 Report of Merritt v SoS for Environment, Transport and Regions
- A5 Extract from PPG: Use of Planning Conditions
- A6 Appeal Decision APP/D3640/W/15/3028247, West End, Woking
- A7 Letter and enclosure from Bracknell Forest Council to Warfield Consortium Members, 27/10/15
- A8 Draft Heads of Terms, Harrow Estates and Milligate Developments Ltd
- A9 Drawing AP-SL-201

Submitted by the Council:-

- C1 Appeal Decision APP/N1730/W/14/3001528, Mattingly, Hook
- C2 Legal submissions of Bracknell Forest Council relating to Habitats Regulations
- C3 Core Strategy Policy CS15
- C4 Proposals Map extract from Site Allocations Local Plan
- C5 Statement on behalf of Natural England dated 14/9/15
- C6 Extract, clause 61 of Habitat Regulations
- C7 Revised draft Planning Conditions
- C8 Planning Obligations SDP

Submitted by Interested Persons:-

- B1 Diagram showing parking arrangements
- B2 Statement on behalf of local residents